

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FIDEL S. HUTCHINS,

Plaintiff,

No. 12-cv-12354

vs.

Hon. Gerald E. Rosen

BARBERA SAMPSON, et al.,

Defendants.

**ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT
AND DENYING LEAVE TO FILE SECOND AMENDED COMPLAINT**

This matter is presently before the Court on a Fed. R. Civ. P. 59(e) Motion to Alter or Amend Judgment filed as a response to the July 2, 2013 Report and Recommendation of Magistrate Judge Mark A. Randon. In this motion, Plaintiff concedes the dismissal recommended by the Magistrate Judge of his Fifth Amendment claim but seeks leave to amend his complaint to substitute his Fifth Amendment claim with a claim of violation of the First Amendment of the Constitution.

Rule 59(e) is not the proper vehicle by which to obtain leave to amend a pleading. Rather, this rule provides a mechanism through which to seek reconsideration (and reversal) of a duly entered judgment or order. Here, however, no “judgment” or “order” has yet been entered. All that has been entered is a report and recommendation of a magistrate judge.

Moreover, even if Rule 59(e) could be used to obtain leave to amend a complaint, Plaintiff's proposed amendment -- the substitution of a First Amendment claim for the Fifth Amendment claim previously alleged -- would be futile. No First Amendment claim arises from the facts upon which this action is predicated. The action here is predicated upon a condition of Plaintiff's parole the violation of which resulted in the revocation of parole and Plaintiff being remanded to custody where he was required to serve the full term of his sentence. No First Amendment right is implicated.

For these reasons,

IT IS HEREBY ORDERED that Plaintiff's July 8, 2013 "Motion to Amend or Alter Judgment" is DENIED.

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: July 15, 2013

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on July 15, 2013, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5135